a fee simple in an executory estate in a 1904 deed. This was the common law rule as to grants, including grants of executory estates. The rule has since been changed by G. C. 8510-1 (1925) making words of inheritance unnecessary in grants by deed. Inasmuch as the deed in the principal case was made in 1849, the common law rule would have been applicable as to executory estates; but the principal case involved not an executory estate but a reversionary interest. The common law never required words of inheritance in the creation of reversionary interests[10] since reversions are not granted but remain in the grantor.

The conclusion that a determinable fee was created finds additional support in this case in the doctrine that a trustee receives only such title as is necessary for the purposes of his trust.[11] Although here the grant to the trustees was in terms an absolute fee, it was in the form of a trust.[12] In trusts the *quantum* of estate to be taken by the beneficiary should be determined solely by the grantor's expressed intention.[13] Therefore the reverter clause in this deed should have taken effect to limit the beneficiary's interest to a determinable fee, and since the trustees would then need only a determinable fee, a legal fee simple determinable should result.

H. S. M.

Dower in Ohio in Case of Forced Sale

A cotenant petitions for the partition of certain realty, claiming an undivided one-half interest, and also for reasonable allowance for permanent improvements made by the petitioner's assignor with the other cotenant's consent. The latter's spouse claims right of dower in his interest now held by a bankruptcy trustee and cross-petitions for determination of the value of her estate therein and its allowance to her out of the proceeds of the sale. *Held*: That the sale be made, that the petitioner be allowed one-half of the value of the improvements made, and that cross-petitioner's inchoate dower be valued and paid out of the proceeds. *Russell* v. *Russell*, 137 Ohio St. 153. In making the award of inchoate dower, the Court of

[10] *See* footnote 3, *supra*.

[11] Young v. Bradley, 101 U. S. 782 (1879); 1 Scott, Trusts, pp. 482-487.

[12] That this probably was a passive trust would not alter the result, since there is no Statute of Uses in Ohio.

[13] 1 Scott, Trusts, pp. 664-665.

Common Pleas of Paulding County based its finding on the American Experience Table of Mortality.

From the time Ohio was a part of the Northwest territory until 1932, dower existed as the method of giving the widow some means of support in the property of her deceased husband. By the Ohio statutes,[1] she was given a one-third life interest in all the real property of which her husband had been seized during coverture. Realizing the practical necessity, under such a statutory scheme, of disposing immediately of inchoate dower despite its contingent character, courts worked out ready methods of calculating its present value.[2] Though explained in few cases, the method used generally in Ohio was settled rather early. In *Unger* v. *Leiter*,[3] the Ohio Supreme Court laid down the rule that the value of the wife's contingent right of dower "may be ascertained by reference to the tables of recognized authority on that subject, in connection with the state of health and constitutional vigor of the wife and her husband." The year before, in *Black* v. *Kuhlman*,[4] the Bowditch Table had been specifically approved for the calculation of inchoate dower.[5] Hence with the knowledge of the ages of the owner and his spouse and the value of the property, the answer could be easily computed.[6]

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[1] OHIO GEN. CODE, Sec. 8606; Dunseth v. Bank of the United States, 6 Ohio 77 (1833).

[2] Without such methods, the clumsiness of handling inchoate dower is illustrated by the early English practice where specific performance was asked of a contract to convey land with abatement of purchase price because the wife would not release dower. In Wilson v. Williams, 3 JUR. (N.S.) 810 (1857), the court set aside one-third of the purchase money, giving the vendor the interest on it during the joint lives of himself and his wife and the principal upon her death, should he survive her; otherwise the interest was given to the wife after the vendor's death, and the principal given to the vendee at her death. Inchoate dower was abolished in England by Act 3 and 4 William IV, c. 105.

In Ohio, there was early legislative sanction of giving a present value to a wife's contingent dower in the real estate of an insolvent debtor, where a statute directed the probate court to ascertain such and that it be paid to her. 82 Ohio Laws 14.

[3] 32 Ohio St. 210 (1877).

[4] 30 Ohio St. 196 (1876).

[5] As a result, that table is included in THROCKMORTON'S OHIO CODE ANNOTATED, which bears the seal of approval of Ohio's Secretary of State. In commenting on this and other dower tables, it is pointed out that a court has authority, in determining the present value of dower, to consider the state of health of the parties involved. Mandel v. McClave, 46 Ohio St., 407, 22 N. E. 290, 15 Am. St. Rep. 627 (1889) is not merely a mathematical calculation, and any reasonable manner of estimating the value of dower is permissible in this state.

Also there is a modern trend to base the calculation of all dower interests on the American Experience Table of Mortality, which shows a slightly longer life expectancy than the English Carlisle Table upon which the Bowditch Table is based.

Also *see* OHIO GEN. CODE, Sec. 10512-1: "The American Experience Table of Mortality shall be the legal basis of determining present value in probate matters."

[6] In 19 Corpus Juris, *Dower*, Sec. 107, is presented the method of ascertaining the present value of inchoate dower that is used in many states: "Ascertain the present value of an annuity for her life equal to the interest in the third of the proceeds of the

In 1932, when other provision was made for the support of the surviving spouse,[7] dower was abolished in all cases except those where the decedent spouse had aliened or encumbered the property during coverture.[8] It was no longer to exist in those lands of which he died seized. Where the transfer has been voluntarily made, there is, then, no change from the situation as it existed prior to 1932; unless the spouse executes a release of dower, she obtains a right that becomes consummate if she survives her husband.[9] But where the transfer is involuntary and made pursuant to a court order, there is a strong argument that inchoate dower should be abolished.[10] There are cases in Ohio which hold it to be divested in a partition proceeding, although a conflict exists on that point.[11] It is quite well established that inchoate dower cannot be set up against the state when the land is being appropriated under the right of eminent domain.[12] But, on the other hand, it is nearly always allowed in bankruptcy proceedings.[13] Whether or not dower is to be recognized in these involuntary proceedings depends upon the basic purpose of the new statutory provision. Of the different likely reasons for the saving of dower in the case of property aliened or encumbered during coverture, only one would justify allowance if the transfer is in effect involuntary; this one being that the intention of the legislature was

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estate to which her contingent right of dower attaches, and then to deduct from the present value of the annuity for her life the value of a similar annuity depending on the joint lives of herself and her husband, and the difference between those two sums will be the present value of her contingent dower." This method was first used in Jackson v. Edwards, 7 Paige (N. Y.) 386 (aff. 22 Wend. 498) (1839); but it has been cited with approval by many courts since then, among which are: Gordon v. Tweedy, 74 Ala. 232, 49 Am. Rep. 813 (1883); Brown v. Brown, 94 S. C. 492, 78 S. E. 447 (1913); and Strayer v. Long, 86 Va. 557, 10 S. E. 574 (1890).

[7] By the statute of descent and distribution, Ohio Gen. Code § 10503-4, the surviving spouse gets at least one-third of the estate in fee, and can get varying amounts up to the entire estate depending on the number of children and surviving grandparents.

[8] Ohio Gen. Code § 10502-1.

[9] Hereafter this discussion will be written as if it were always the wife claiming dower in her husband's property. Actually, by Ohio Gen. Code § 10502-1, the husband may also claim dower in his wife's property to the same degree.

[10] Inchoate dower has been abolished entirely in England. Note 2, *supra*.

[11] It has been held in the following cases that inchoate dower was divested by a partition proceeding: Weaver v. Gregg, 6 Ohio St. 547, 67 Am. Dec. 355 (1856); Richards v. Richards, 13 Ohio N.P. (N.S.) 153 (1912); and Kibler v. Hand, 88 Ohio St., 533, 106 N. E. 1064 (1913); *see* Long v. Long, 99 Ohio St. 330, 124 N. E. 161 (1919); *contra*: Walker v. Hall, 15 Ohio St. 355 (1864); and Smith v. Rothschild, 4 Ohio C. C. 544, 2 Ohio C. D. 698 (1890). The right to inchoate dower was transmitted to the personalty in Gillett v. Miller, 12 Ohio C. C. 209, 5 Ohio C. D. 588 (1895).

[12] Canan v. Heffey, 27 Ohio App. 430 (1927). This qualifies Long v. Long, *supra* note 11, by saying that the court there meant to divest inchoate dower in appropriation proceedings only, and not in a partition proceeding.

[13] This has even been given legislative sanction, *supra* note 2.

to give some support to the surviving spouse even if the deceased lost the property unwillingly. But the statute has no relevancy to involuntarily transferred property if the legislative purpose was to give to the wife an element of control over the husband's property, or, more important, if it was to prevent the husband from deliberately depriving his wife of her distributive share by conveying away his real property before death. Thus in the principal case there is doubt as to whether inchoate dower should have been recognized at all, although by the best precedent the wife was so entitled.

If inchoate dower is to be allowed, however, the Bowditch Table should no longer be used for valuation, inasmuch as there is no present basis for its assumption that dower is certain to attach provided the wife survives the husband. Since 1932, with dower abolished in all lands of which the owner died seized, there is now no such certainty; and if the owner had not been forced to convey his property by order of the court, there is at least the possibility that he would have kept it until his death. Granted that the possibility of the owner's not disposing of his property cannot be figured on an actuarial basis, yet it must be conceded that the new uncertainty added by the 1932 statutory change in policy should somewhat lessen the value of inchoate dower. There is no evidence that the court considered this in setting the amount of the award in the principal case. W. N. P.

SALES

Sales—Effect of Repossession for a Special Purpose By the Seller Upon a Subsequent Mortgage

The plaintiff purchased a new Hudson automobile from a dealer and agreed to pay for it by trading in his old car and giving a check to cover the balance. After using the car a day or two the plaintiff returned it to the dealer to have a new clutch installed. It was necessary for the dealer to send to the factory for the new part. Pending completion of the repairs the plaintiff temporarily stopped payment of the check. Several weeks later the dealer mortgaged the car to the defendant finance company whose agents secured possession in some manner and placed it in the defendant's garage.[1] The plaintiff brought an action of replevin for the car. The trial court

[1] Both the Eastbourne Garage, Inc. and the C. I. T. Corp. were joined as defendants in this action.